

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
FLORENCE DIVISION

Jerry Powell,)	
)	
Plaintiff,)	Civil Action No. 4:11-2913-TMC
)	
v.)	ORDER
)	
Carolyn W. Colvin, Acting)	
Commissioner of Social Security, ¹)	
)	
Defendant.)	
)	

This matter comes before the court on the plaintiff, Jerry Powell’s (“Powell”) motion for an award of attorney’s fees under the Equal Access to Justice Act (“EAJA”), 28 U.S.C. § 2412. (Dkt. No. 40.) Powell seeks a total award of \$4,275.00, representing 9.5 attorney hours and 29 paralegal hours² at an hourly rate of \$180.00 per hour of attorney time and \$90.00 per hour of paralegal time. The Commissioner objects to an award under the EAJA, contending that her position on appeal was substantially justified. (Dkt. No. 41.)

Under the EAJA, a court may award attorney’s fees to a party prevailing against the government, unless the government can show that its position was substantially justified. 28 U.S.C. § 2412(d)(1)(A). Substantially justified, in this sense, means “reasonable . . . both in law and in fact,” such that “a reasonable person could think it correct.” *Pierce v. Underwood*, 487 U.S. 552, 565-66 (1988).

Powell originally brought this action seeking judicial review of the Commissioner’s denial of Powell’s request for disability insurance benefits and supplemental security income.

¹ Carolyn W. Colvin became the Acting Commissioner of the Social Security Administration on February 14, 2013. Pursuant to Federal Rule of Civil Procedure 25(d), Colvin should be substituted for Michael J. Astrue as the defendant in this action.

² This calculation includes thirty minutes of attorney time and one and one half hours of paralegal time spent replying to the Commissioner’s response to Powell’s motion for fees.

During the administrative proceedings, an Administrative Law Judge (“ALJ”) denied Powell’s request, finding that he was not disabled partially based on certain evidentiary gaps in the record. To fill those gaps, when Powell appealed, he submitted additional evidence to the Appeals Council. The Appeals Council considered the additional evidence, making it part of the record, but denied Powell’s request for review, finding that the evidence did not undermine the ALJ’s decision.

On review, this court found that, considering the record as a whole, including the new evidence, it could not determine whether or not the ALJ’s decision was supported by substantial evidence. Therefore, in accordance with the Fourth Circuit’s decision in *Meyer v. Astrue*, 662 F.3d 700 (4th Cir. 2011), the court remanded the case pursuant to sentence four of 42 U.S.C. § 405(g) for the Commissioner, as fact finder, to weigh the new evidence.

In response to Powell’s request for attorney’s fees, the Commissioner re-asserts arguments from her Memorandum in Support of the Commissioner’s Decision and in Response to Plaintiff’s Brief (Dkt. No. 24) that the court already found unpersuasive once. Accordingly, after a thorough review of the record in this case, including the administrative record, the court finds that the Commissioner has failed to show that her position was substantially justified. Powell’s motion for attorney’s fees (Dkt. No. 40) is, therefore, **GRANTED**.

The Commissioner did not object to the number of hours sought or the proposed hourly rate. However, the court denies Powell’s request for supplemental fees, finding his reply brief repetitive and cumulative of his initial fee request, and therefore not a sufficient reason to award additional fees. Consequently, the court awards Powell fees in the amount of \$4,095.00 for nine hours of attorney time and 27.5 hours of paralegal time.

Finally, the Commissioner correctly notes that the award under the EAJA must be made to the plaintiff. The court orders that the Commissioner issue the award in the name of the plaintiff and forward the check to plaintiff's counsel at his office.

IT IS SO ORDERED.

s/Timothy M. Cain
Timothy M. Cain
United States District Court Judge

Anderson, South Carolina
April 11, 2013